

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

G.D. KING TRUCKING
Respondent

Case No.: I-00-11252

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 20 Chapter 9 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (No. 00-11252) served August 24, 2001, the Government charged Respondent G.D. King Trucking with a violation of 20 DCMR 900.1 which prohibits, with certain exceptions, motor vehicles from idling their engines for more than three (3) minutes while parked, stopped or standing. The Notice of Infraction charged that Respondent violated 20 DCMR 900.1 on August 2, 2001 while parked in the 300 block of Morse Street, N.E., and sought a fine of \$500.¹

¹ Although the Notice of Infraction alleges that the violation occurred on August 2, 2001, a photograph of Respondent’s truck submitted by the Government on August 29, 2001 lists a date of July 23, 2001. In its explanation, Respondent represents that while the truck identified in the Notice of Infraction was in Ohio on August 2, 2001, it was in the 300 block of Morse Street, N.E. on July 23, 2001 as depicted in the Government’s photograph. I find, therefore, that the Government listed August 2, 2001 on the Notice of Infraction in error, and that the actual date of the alleged violation was July 23, 2001. In light of Respondent’s plea, however, the Government’s error in this regard is not material for purposes of the disposition of this case.

On August 29, 2001, this administrative court received Respondent's plea of Admit with Explanation pursuant to D.C. Official Code § 2-1802.02, along with a request for a reduction or suspension of the authorized fine. In its explanation, Respondent explained that its driver saw no notice of the District's engine idling law posted, and that it was the driver's first time in the area. In addition, Respondent explained that its truck was running its engine in order to maintain adequate refrigeration for cargo consisting of perishable vegetables. Finally, Respondent represented that it has "notified all of its drivers of the law, and will abide by it in the future."

By order dated August 31, 2001, I permitted the Government an opportunity to respond to Respondent's request within ten (10) calendar days of the order's service date. No response was submitted by the Government. Accordingly, this matter is now ripe for decision.

II. Findings of Fact

1. By its plea of Admit, Respondent G.D. King Trucking has admitted violating 20 DCMR 900.1 on July 23, 2001 in the 300 block of Morse Street, N.E.
2. On July 23, 2001, Respondent idled the engine of its truck for more than three (3) minutes while parked in the 300 block of Morse Street, N.E.
3. On July 23, 2001, Respondent's truck was running its engine in the 300 block of Morse Street, N.E. in order to maintain adequate refrigeration for its cargo consisting of perishable vegetables.²

² Respondent's plea obviates the need for the administrative court to determine the impact of these facts on the issue of liability. *See* 20 DCMR 900.1(a).

4. Respondent's driver visited the 300 block of Morse Street, N.E. for the first time on July 23, 2001. Respondent was not aware of the provisions of 20 DCMR 900.1 and its driver did not observe any signs informing persons of those provisions in the area.
5. Respondent has accepted responsibility for its unlawful conduct.
6. Upon the issuance of the Notice of Infraction, Respondent promptly advised all its drivers of the requirements of 20 DCMR 900.1.
7. There is no evidence in the record of a past history of non-compliance by Respondent.

III. Conclusions of Law

1. Respondent violated 20 DCMR 900.1 on July 23, 2001 in the 300 block of Morse Street, N.E. A fine of \$500 is authorized for a first offense of this violation. 16 DCMR §§ 3201.1(b)(1) and 3224.3(aaa).
2. Respondent has requested a reduction or suspension of the authorized fine. Under these circumstances, a reduction, but not a suspension, of the fine is appropriate. Respondent's assertion that it had no prior notice of the proscriptions of 20 DCMR 900.1 is unavailing. As an entity doing business in the District of Columbia, Respondent is expected to be on notice of applicable District of Columbia laws, and is required to be in compliance with those laws – particularly those such as 20 DCMR 900.1 that have been in effect for years. *Accord Department of Health v. Good's Transfer, Inc.*, OAH Final Order, I-00-10436 at

3-4 (Final Order, February 1, 2001); *see also Shevlin-Carpenter Co. v. State of Minnesota*, 218 U.S. 57, 68 (1910) (noting ignorance of law is no excuse, particularly where “[t]here is no element of deception or surprise in the law.”).

3. By complaining about the alleged lack of warning signs posted in the area of the violation, Respondent also appears to suggest that the Government is not doing enough to make the public aware of the requirements of 20 DCMR 900.1. In the District of Columbia, the Government’s public notice obligation is to publish the law or regulation in the D.C. Register in keeping with applicable comment and review periods.³ The text of 20 DCMR 900.1 and all recent amendments appear to have been published in the D.C. Register in accordance with those requirements. *See* 32 D.C. Reg. 565, 647 (February 1, 1985); 46 D.C. Reg. 6017 (July 23, 1999); 46 D.C. Reg. 8699 (October 29, 1999). While providing additional notice of a law or regulation may indeed be beneficial from a public policy standpoint, it is generally not within the purview of an administrative court to impose such an obligation on that basis. As this administrative court explained in *DOH v. Bloch & Guggenheimer, Inc.*, OAH No. I-00-10439 at 4-5 (Final Order, April 17, 2001):

While the D.C. Council has at times required additional notice for regulations that impact upon broad segments of the general public, it does not generally do so for sophisticated commercial interests in a regulated industry. The policy question of whether some better form of public notice for 20 DCMR 900.1 should be utilized is not for this administrative court to decide.

³ *See* District of Columbia Office of Documents Act of 1978, effective March 6, 1979 (D.C. Law 2-153; D.C. Official Code § 2-533); District of Columbia Administrative Procedures Act, approved October 21, 1968 (Public Law No. 90-614, 82 Stat. 1204; D.C. Official Code §§ 2-501 *et seq.*).

4. Although Respondent has criticized the alleged lack of prior notice regarding the proscriptions of 20 DCMR 900.1, it has nevertheless acknowledged responsibility for its unlawful conduct. Respondent also promptly took steps to apprise all of its drivers of the regulation. In addition, Respondent's non-compliance in this instance is partially mitigated by uncontroverted evidence in the record that the reason its truck's engine was idling for more than three (3) minutes while parked on July 23, 2001 was to maintain adequate refrigeration for its perishable cargo. *See* 20 DCMR § 900.1(a). Moreover, there is no evidence in the record of a past history of Respondent's non-compliance. Accordingly, the fine of \$500 originally sought by the Government will be reduced to \$175. *See* D.C. Official Code §§ 2-1802.02(2) and 2-1801.03(b)(6); 18 U.S.C. § 3553; U.S.S.G. § 3E1.1.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby, this ____ day of _____, 2002:

ORDERED, that Respondent shall pay a fine in the total amount of **ONE HUNDRED SEVENTY-FIVE DOLLARS (\$175)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **04/08/02**

Mark D. Poindexter
Administrative Judge